CANADA.

OUR FUTURE TOGETHER

"FACT SHEET"

Canada

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Fact Sheet

REBALANCING ROLES AND RESPONSIBILITIES

Introduction

- As globalization continues to have an impact on the nations of the world, adjustments must be made to maintain the standard of living we have come to enjoy and expect.

- In response to this, efforts have been made to strengthen the Canadian federation by finding ways for governments to become more efficient and to work better together; effective intergovernmental collaboration is essential to Canada's future prosperity and well-being.

- All governments believe it is necessary that the role of the provincial governments be clarified and, in some cases, expanded. Needs and concerns differ from one province to the next.

- This reality must be acknowledged and accommodated in a realigning of roles and responsibilities. This will allow governments to reduce duplication and overlap.

Specific Jurisdictions

- The following is a general list of the major proposals the federal and provincial governments, the governments of the territories, and the four national Aboriginal associations have agreed should be part of a renewed federation:

  — **Federal Spending Power: New Canada-Wide Shared-Cost Programs.** The authority of the Government of Canada to establish national shared-cost programs would be confirmed. However, it would be subject to the federal government's providing reasonable compensation to the government of a province that chose not to participate in a new program in an area of exclusive provincial

jurisdiction, if that province carried on a program or project that was compatible with the national objectives.

— **Federal Spending Power: Framework.** Uses of the federal spending power would be governed by a framework to be devised and reviewed annually by First Ministers. This framework would ensure that when the federal spending power was used in areas of exclusive provincial jurisdiction, it would contribute to the pursuit of national objectives, reduce overlap and duplication, respect provincial priorities and ensure equal treatment of the provinces. These limits on the federal spending power would not affect commitments to equalization. This framework agreement for the use of the federal spending power may eventually be constitutionalized.

— **Protection of Intergovernmental Agreements.** A mechanism would ensure that designated agreements between governments were protected from unilateral change. Each application would cease to have effect after five years, but could be extended for additional periods, not exceeding five years each. Governments of Aboriginal peoples would have access to this mechanism. The provision would be available to protect both bilateral and multilateral agreements among federal, provincial and territorial governments on any subject.

— **Provincial Jurisdictions.** Provinces would have exclusive legislative authority over forestry, mining, tourism, housing, recreation and municipal and urban affairs, recognized through explicit constitutional amendments. At the request of a province, the federal government would negotiate an agreement setting out its role in that province. The federal government would also be required to provide reasonable compensation when asked by a province to withdraw.

  Labour market development and training would be matters of exclusive provincial jurisdiction. At the request of a province the federal government would be obligated to withdraw from any or all training or other labour market development activities except in the area of unemployment insurance. Unemployment insurance and related services would remain within federal legislative jurisdiction. Provinces would be able to pursue their own priorities in labour market development and training. This could include programs targeted to youth and workplace-based training programs. The federal government would maintain its responsibilities in the establishment of national policy objectives in the

area of labour market development, and would continue to commit funds to job creation programs.

— **Culture.** Responsibility for culture is not currently set out in the Constitution. The agreement would recognize exclusive provincial jurisdiction over cultural matters within a province. But there would be recognition of the federal government's continuing responsibility for national cultural institutions, and for grants and contributions delivered by these institutions. The federal government is committed to negotiating cultural agreements with provinces in recognition of their lead responsibility for cultural matters within the province and to ensuring the federal government and the province work in harmony.

— **Immigration.** All provinces could choose to exercise more control over immigration through agreements negotiated with the federal government. This would give provinces and territories a greater role in providing services to immigrants and in settlement matters. Immigration is currently an area of shared jurisdiction.

— **Telecommunications.** All governments are committed to coordinating and harmonizing procedures among their respective regulatory agencies in this field, such as the CRTC.

— **Regional Development.** Regional development would not become a separate power in the Constitution. The federal government would be required to negotiate regional development agreements with provinces or territories at their request. Provinces would be treated equally and fairly, taking into account the individual needs and circumstances of the province or territory, with special focus on regions suffering the greatest economic disparities. Designated agreements between governments could be protected from unilateral change. Governments would be committed to providing reasonably comparable economic infrastructure of a national nature in each province and territory.

— **Equalization Payments.** Parliament and the Government of Canada are committed to making equalization payments so that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation. The Constitution would also commit the federal government to consultation with the provinces before introducing legislation relating to equalization payments. It would also entrench the commitment of all

governments to the promotion of regional economic development to reduce economic disparities.

— **Federal Power of Disallowance and Reservation.** This provision of the Constitution which has not been used by the federal government in relation to provincial legislation in more than 50 years would be repealed.

— **Federal Declaratory Power.** Subsection 92(10)(c) of the *Constitution Act, 1867*, which permits the federal government to declare a "work" to be for the general advantage of Canada and bring it under the jurisdiction of Parliament should be amended so that this could be done only with the explicit consent of the province(s) involved.

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RESPONSIVE INSTITUTIONS

Introduction

- Federal institutions have been the subject of close study in the Canada Round.
- Reforms have been proposed to meet the challenges of our changing society.
- Canadians have played a big role in discussions on this subject, pointing out areas for improvement.
- Recommendations for change in the Senate, House of Commons and the Supreme Court of Canada have been made to make these institutions more representative.
- Our federal institutions must treat all Canadians fairly and reflect our diversity.
- The following changes have been proposed to make our institutions more responsive.

The Senate

- As with virtually all federations, Canada's central legislature is composed of two houses. The lower house (the House of Commons) is designed to represent the people on a representation by population basis. The upper house (the Senate) is designed to give the less populous regions a greater say in the policy-making process of Parliament.
- Selection for Canada's upper house is now by appointment rather than election.
- In recent years, criticism of the Senate has come from those who believe that federal decision making is not responsive to regional diversity.

- Critics also believe that a non-elected body lacks the legitimacy necessary to perform its role.

- Extensive negotiations between the federal and provincial governments, the governments of the territories and the four national Aboriginal associations, have resulted in an agreement to reform the Senate.

- This agreement responds to and reconciles three visions of Canada — equality of provinces, equality of citizens, and equality of English and French linguistic and cultural communities.

- This Senate model would establish a new balance in Parliament by giving the less populous provinces more clout in the legislative process.

- Generally, the agreement provides for the following:

  — equal provincial representation, with six seats per province and one per territory, for a total of 62;

  — equality of the linguistic communities: bills materially affecting the French language or culture would be subject to a double majority vote in the Senate. This means they would have to receive approval by both a majority of Francophone Senators voting and a majority of all Senators voting on the matter;

  — Aboriginal representation would be guaranteed in the Constitution, the powers and method of election to be determined at a meeting in the fall. Aboriginal seats will be in addition to provincial and territorial seats;

  — election of Senators — either by provincial or territorial legislatures or by the people. Elections would be simultaneous with House of Commons elections. Where there are Senate elections by the people, they would be under federal jurisdiction or under provincial administration, subject to federal guidelines. Federal legislation would be flexible for all provinces and territories for greater equality;

  — meaningful and effective powers:

    (i) bills involving fundamental tax policy changes directly affecting natural resources could be vetoed by a simple majority vote;

(ii) on supply bills, the Senate would have a 30-calendar-day suspensive veto;

(iii) ratification of appointments, including the Governor of the Bank of Canada, heads of national cultural institutions, and the heads of federal regulatory boards and agencies could be vetoed by a simple majority vote;

(iv) all other legislation would, if defeated or amended by the Senate, trigger a joint sitting of the Senate and House of Commons where a simple majority would decide the passage or defeat of legislation;

(v) Senators could initiate bills, except for money bills. The House of Commons, and therefore the Government, would be obliged to dispose of bills approved by the Senate within a certain time limit. In turn, the Senate would be obliged to dispose of bills approved by the House of Commons within 30 sitting days of their receipt.

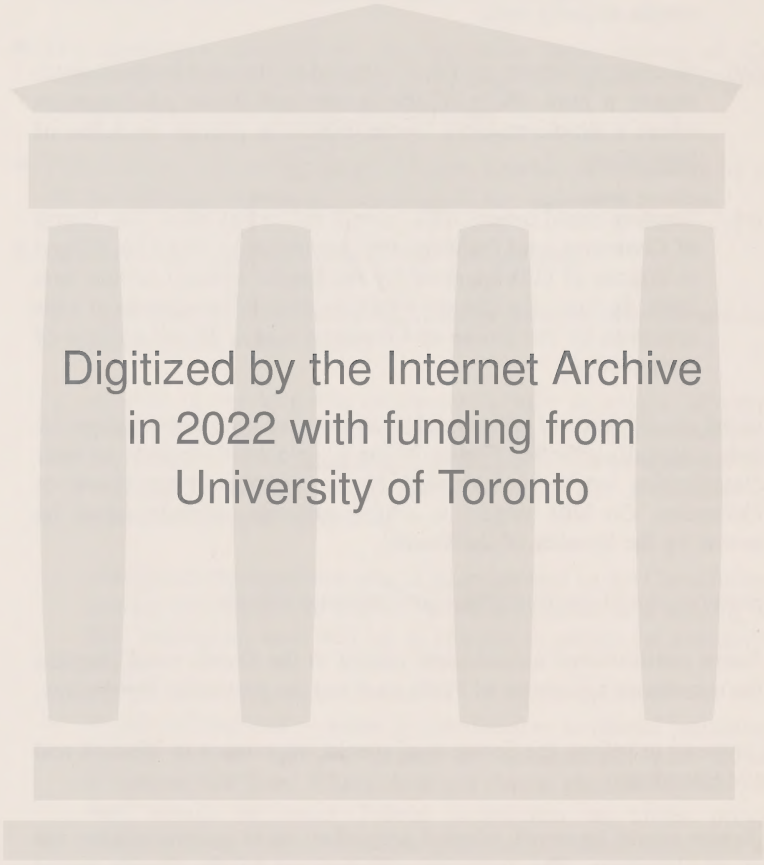
— initial classification of bills would be done by the originator. Except for bills materially affecting French language or culture, appeals on their classification would be dealt with by the Speaker of the House of Commons. On bills subject to double majority, appeals would be settled by the Speaker of the Senate;

— Senators would not be eligible for Cabinet positions;

— future constitutional amendments related to the Senate would require the unanimous agreement of Parliament and the provincial legislatures.

- This proposal to reform the Senate is of special importance to Western and Atlantic Canadians.

- The Senate would be equal, elected and effective to counterbalance the House of Commons. The increased effectiveness of the Senate would require both the government and members of the House of Commons as a whole to consult with and listen to the views of the Senate.



The House of Commons

- Canadians believe that the House of Commons should reflect the principle of the equality of citizens through representation by population.

  — To offset the loss of Senate seats by the more populous provinces, it is proposed that the present 295-member House be enlarged to 337, with the additional 42 seats distributed among these provinces as follows: 18 to Ontario; 18 to Quebec; 4 to British Columbia; and two to Alberta.

  — Quebec would also be guaranteed no less than 25 percent of the seats in the House of Commons as recognition of its distinct society.

  — There would be a formula for better reflection of representation by population in future adjustments.

  — A special one-time adjustment would be made following the 1996 census, in addition to the regular one that would follow the 2001 census.

  — This would not result in any loss of seats for less populous provinces.

  — Future constitutional amendments affecting the House of Commons would require unanimity.

The Supreme Court

- The Supreme Court of Canada stands at the apex of the judicial system. Created in 1875 as a general court of appeal, it became in 1949 the court of final resort in all new cases emanating from Canadian courts and tribunals. It is also empowered to hear references from the federal government on important issues.

- With the adoption of the *Canadian Charter of Rights and Freedoms* in 1982, the Supreme Court became an even more important national institution, charged with Charter interpretation in new areas of law.

- It is a national institution that has not yet been entrenched in the Constitution.

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THE SOCIAL AND ECONOMIC UNION

- Canadians who spoke during the Canada Round wanted a statement of social and economic goals for Canada to be entrenched in the Constitution.

- Canada's Social and Economic Union describes the commitment federal and provincial governments would have to preserving and developing certain social and economic programs. As a commitment by governments, it would not be justiciable. Thus judges (who are not elected) could not rule on these matters.

- The policy objectives in the provision on the social union would include, notably:

  — providing throughout Canada a health-care system that is comprehensive, universal, portable, administered by the state and accessible;

  — providing social services that ensure that all Canadian residents can meet their basic needs, especially for food and housing;

  — providing high-quality primary and secondary education to all residents of Canada and ensuring them reasonable access to post-secondary education;

  — protecting the rights of workers to organize and bargain collectively; and

  — protecting, preserving and sustaining the integrity of the environment for present and future generations.

- Canada's economic union goes hand in hand with its social union.

- The policy objectives in the provision on the economic union would include, notably:

  — working together to strengthen the Canadian economic union;

  — providing for the free movement of persons, goods, services and capital;

  — striving for full employment;

  — ensuring that all Canadians have a decent standard of living; and

  — ensuring sustainable and equitable development.

- A mechanism for monitoring the Social and Economic Union is to be determined by a First Ministers' Conference.

- Canada would be a Social and Economic Union, within which, with certain exceptions and protections, persons, goods, services and capital could move freely across provincial and territorial boundaries. First Ministers would decide at a future First Ministers' meeting on the economy how best to implement these principles and what type of dispute resolution agency would best ensure that these principles are met.

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THE CANADA CLAUSE

- The federal government, the governments of the provinces and territories, and representatives of the four national Aboriginal associations have developed a Canada Clause to respond to the desire of Canadians to set out in their Constitution a statement of what it means to be a Canadian.

- The Canada Clause would give us a sense of the values we hold in common. It would represent our commitment to them.

- It would also accommodate our diversity, in which Canadians take pride and for which we have become world-renowned.

- In the meetings on the Constitution between March and August 1992, it was decided to express in one statement some of our unique characteristics. These would help guide the courts in the future as they interpret the entire Constitution, including the *Canadian Charter of Rights and Freedoms*.

- These characteristics include:

  — parliamentary democracy, Canadian federalism and the rule of law;

  — linguistic duality;

  — Quebec's distinct society;

  — Aboriginal rights and responsibilities and recognition that Aboriginal governments would constitute one of three orders of government in Canada;

  — racial and ethnic equality;

  — respect for individual and collective human rights and freedoms;

  — equality of women and men; and

  — equality of provinces, while recognizing their diverse characteristics.

- A key building block of the Canada Round is the recognition of Quebec as a distinct society within the Canadian federation. This is certainly not a new idea. It has deep roots in our earliest history. More than 200 years ago Quebec was granted the right to preserve its language, its culture and its civil law tradition. The Canada Clause would be a modern expression of this reality. To understand and accept Quebec's distinct society is to acknowledge a vital part of Canada's history. To ignore it is to jeopardize our future together.

- The Canada Clause would also state that the Constitution is to be interpreted consistent with the commitment of Canadians and their governments to the vitality and development of official language minority communities throughout Canada.

- The Canada Clause is part of the effort to underline the common aspirations of Canadians. The proposed agreement also includes a statement of the common policy objectives that would underlie Canada's Social and Economic Union and a firm commitment to equalization and regional development.

- The Canada Clause in the Constitution would remind all Canadians that we are defined by more than just our political, legal and social institutions. Our Canadian identity distinguishes us from other nations. Our goals are founded in our particular experiences and history.

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THE AMENDING FORMULA

- At the meetings on the Constitution held between March and August 1992, discussions on improving the amending formula addressed four major concerns: — How would future amendments be made to national institutions such as the Senate and the Supreme Court? — How would Canadian territories be admitted to provincial status? — Under what circumstances should compensation be provided to provinces that opt out of a transfer of provincial legislative power to Parliament? and — What is the requirement on Aboriginal consent concerning amendments that directly refer to Aboriginal peoples?

- The following changes to the amending formula require the unanimous consent of Parliament and the provincial legislatures.

- The federal and provincial governments agreed on the following:

  — **Changes to National Institutions.** Any further amendments to the Senate would require the unanimous consent of Parliament and the provincial legislatures, once the current set of amendments to reform the Senate came into effect.

  The Constitution would entrench the current provisions of the *Supreme Court Act*. This specifies that the Supreme Court is to be composed of nine members, of whom three must be members of the civil law bar of Quebec. Future changes to the composition of the Supreme Court would require the unanimous consent of Parliament and the provincial legislatures.

  The new provisions for appointments from lists submitted by the provinces and territories could be implemented by the 7/50 general amending formula (the agreement of seven provinces representing at least 50 percent of the population). Future amendments affecting the House of Commons, including changes to the guarantee of 25 percent of seats for Quebec, would require unanimity.

— **Establishment of New Provinces.** The current 7/50 amending formula for creating new provinces would be rescinded. It would be replaced by the pre-1982 provisions that allow the creation of new provinces through an act of Parliament, following consultation with all of the existing provinces. Full participation in all the elements of provincehood, such as an increase in the number of Senators for the new province and a full role in the amending formula, would take place only with the unanimous consent of the provinces and Parliament.

— **Compensation for Amendments that Transfer Jurisdiction.** Reasonable compensation would be required for a province that opts out of an amendment transferring provincial legislative jurisdiction to the federal government in any area (and not just in the case of education and other cultural matters as currently required).

— **Aboriginal Consent.** There should be Aboriginal consent to future constitutional amendments that directly refer to Aboriginal peoples. Discussions are continuing on the mechanism to express this consent.

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ABORIGINAL SELF-GOVERNMENT

- The agreements reached in the Canada Round with Aboriginal peoples are unprecedented and aim at redefining their role in Canadian society in the future.

- The relationship with Aboriginal peoples was essentially redefined in the Government of Canada's set of 28 proposals for a new Canadian federation called *Shaping Canada's Future Together*, tabled September 24, 1991. These recommendations were studied intensely during the months that followed by the Special Joint Committee on a Renewed Canada. There was also a special conference on First Peoples and the Constitution to examine Aboriginal self-government and its implementation.

- The Government of Canada supported a series of "parallel processes" undertaken by the four national Aboriginal associations. The purpose was to gather ideas and opinions at the grassroots level so that Aboriginal leaders could gain an understanding of what their people wanted in an agreement.

- In March 1992, leaders of the four national Aboriginal associations joined federal, provincial and territorial constitutional affairs ministers as full participants in the multilateral constitutional process. This was the first time that Aboriginal leaders had been invited to participate in discussions of the full range of constitutional issues.

- Negotiated in a spirit of compromise and flexibility, the consensus reached in the Canada Round would be the basis for the kind of future to which Canada's Aboriginal peoples aspire. It would also confirm their commitment to share in building a new, stronger Canada.

- Agreement has been reached on the following items:

  — The inherent right of Aboriginal peoples to self-government within Canada should be recognized in the Constitution.

— Aboriginal governments should be one of three constitutionally recognized orders of government within the Canadian federation.

— The authority of legislative bodies of the Aboriginal peoples would be spelled out in the Constitution. The entrenchment of the inherent right of self-government would not create new rights to land.

— Governments and Aboriginal peoples are committed to negotiating agreements setting out how the inherent right would be implemented. These negotiations would ensure that self-government reflects the particular needs and circumstances of Aboriginal communities across Canada. All Aboriginal peoples would have equitable access to this negotiating process. To facilitate this process, a mediation and arbitration mechanism would also be established.

— The justiciability of the inherent right of self-government should be delayed for five years. Once the period of delay has expired, the courts or a tribunal would have to be satisfied that every effort had been made to resolve matters through negotiations before deciding on the scope of the right or on an assertion of that right.

— The *Canadian Charter of Rights and Freedoms* would apply to Aboriginal governments and would continue to take into account the unique rights of Aboriginal peoples. In addition, Aboriginal and treaty rights would be guaranteed equally to Aboriginal women and men.

— To ensure an orderly transition, federal and provincial laws would continue to apply until displaced by a law enacted in an Aboriginal legislative body. Laws adopted by Aboriginal governments would have to be consistent with federal and provincial laws that are essential to the preservation of peace, order and good government in Canada. However, this provision would not extend the legislative authority of Parliament or of the legislatures of the provinces.

— The Constitution would provide for the establishment of a joint federal/Aboriginal process to clarify or implement **treaty rights** or rectify terms of treaties when the parties agree. It would also provide that treaty rights are interpreted in a just, broad and liberal manner, in accordance with the spirit, intent and context of the treaty negotiations. The intention is not to reopen treaties or land claims agreements, but rather to ensure that their provisions are respected. In addition, all Aboriginal peoples would have access to those Aboriginal and treaty rights, recognized and affirmed in Section 35 of the *Constitution Act, 1982*, that pertain to them.

— The roles and responsibilities of the federal and provincial governments concerning Métis people would be clarified in a separate Métis Nation accord. The accord would be accompanied by a constitutional amendment extending the federal legislative authority to all Aboriginal peoples, including the Métis.

— It has been agreed that there would be Aboriginal seats in the Senate. The details relating to Aboriginal representation in the Senate (numbers, distribution, method of selection) would be discussed further by governments and representatives of the Aboriginal peoples in negotiations to be held early in the fall of 1992. Aboriginal Senators would have the same power as other Senators, and could possibly have a double majority power on certain matters materially affecting Aboriginal peoples.

— The role of Aboriginal peoples on the Supreme Court would be recorded in a political accord and should be on the agenda of a future First Ministers' Conference on Aboriginal issues. Provincial and territorial governments would develop a regional process for consulting representatives of the Aboriginal peoples of Canada in preparing lists of candidates to fill vacancies on the Supreme Court.

— Aboriginal representation in the House of Commons would be pursued after studying the recommendations of the Royal Commission on Electoral Reform and Party Financing.

— Aboriginal consent would be required for future constitutional amendments that directly affect Aboriginal peoples. Discussions are continuing on the most appropriate mechanism by which this consent would be expressed.

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